

Amendment No. 6 to SB2114

Johnson
Signature of Sponsor

AMEND Senate Bill No. 2114

House Bill No. 2141*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 17-1-301, is amended by deleting the section in its entirety and by substituting instead the following:

§ 17-1-301.

(a)

(1) Each judge of a circuit, chancery, criminal or other state trial court of record shall be elected to a full eight-year term of office by the qualified voters of the judicial district or circuit, to which the judge is to be assigned, in a contested election held at the regular August election in 2014 and at the regular August election recurring every eight (8) years thereafter.

(2) If a vacancy occurs during the term of office of any judge of a circuit, chancery, criminal or other state trial court of record because of death, resignation, removal or other reason, then the remainder of the unexpired term shall be filled by the qualified voters of the judicial district or circuit in a contested election held at the next regular August election recurring more than thirty (30) days after the vacancy occurs. In the meantime, the governor shall appoint a person, who is duly licensed to practice law in this state and who is fully qualified under the constitution and statutes of Tennessee, to discharge the duties of such office until the first day of September next succeeding the election.

(3) Each election for the office of judge of a circuit, chancery, criminal or other state trial court of record shall be conducted in accordance with general election law set forth in title 2.

(b)

(1) Each judge of the court of appeals or the court of criminal appeals shall be elected to a full eight-year term of office by the qualified voters of the state in a retention election held at the regular August election in 2014 and at the regular August election recurring every eight (8) years thereafter.

(2) If a vacancy occurs during the term of office of any judge of the court of appeals or the court of criminal appeals because of death, resignation, removal or other reason, then the vacancy shall be filled, for the remainder of the unexpired term, by the qualified voters of the state in a retention election held at the next regular August election recurring more than thirty (30) days after the vacancy occurs. In accordance with § 16-4-102 or § 16-5-102, as the case may be, the vacancy shall be filled from the grand division of the state in which the vacancy occurs. In the meantime, the governor shall appoint a person, who is duly licensed to practice law in this state and who is fully qualified under the constitution and statutes of Tennessee, to discharge the duties of such office until the first day of September next succeeding the election.

(3)

(A)

(i) If an incumbent judge of the court of appeals or court of criminal appeals, whether appointed or elected, seeks election or reelection for a full eight-year term of the office to which the incumbent judge was appointed or elected, as the case may be, then the judge must qualify

by filing a written declaration of candidacy with the state election commission not later than twelve o'clock noon (12:00 p.m.) prevailing time on the first Thursday in February immediately preceding the end of the judge's term. After timely filing such declaration, any request by the candidate to withdraw must be filed with the state election commission not later than twelve o'clock noon (12:00 p.m.) prevailing time on the seventh day after the deadline for filing such declaration of candidacy.

(ii) If an appointed incumbent judge of the court of appeals or court of criminal appeals seeks election to a full eight-year term of the office to which the incumbent judge was appointed, but the incumbent judge was appointed to fill the vacancy after the first Thursday in February preceding the next regular August election recurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent judge, then the judge must qualify by filing a written declaration of candidacy with the state election commission not later than twelve o'clock noon (12:00 p.m.) prevailing time on the first Thursday recurring at least one (1) full week after the appointment. After timely filing such declaration, any request by the candidate to withdraw must be filed with the state election commission not later than twelve o'clock noon (12:00 p.m.) prevailing time on the seventh day after the deadline for filing such declaration of candidacy.

(iii) Unless a contested election is required by subdivision (b)(3)(A)(v), the provisions of title 2, chapter 5,

part 1, do not apply to an election in which an incumbent judge of the court of appeals or court of criminal appeals seeks election or reelection to a full eight-year term of the office to which the incumbent judge was appointed or elected.

(iv) If an incumbent judge, whether appointed or elected, fails to timely file the written declaration of candidacy for election or reelection to a full eight-year term, or if such judge after the qualifying deadline withdraws as a candidate, then a vacancy is created in the office at the expiration of the incumbent judge's current term, effective the first day of September next succeeding the election, and shall be filled in accordance with subdivision (b)(2).

(v) If the judicial evaluation commission makes a recommendation "for replacement" of an incumbent judge of the court of appeals or the court of criminal appeals, but the judge nevertheless files or has filed the declaration of candidacy required by subdivision (b)(3)(A), then subdivision (b)(4) does not apply to the incumbent judge's office; and the election for a full eight-year term for such office shall instead be filled by the qualified voters of the state in a contested election at the regular August election. Each such contested election shall be conducted in accordance with general election law set forth in title 2. In accordance with § 2-13-203, each political party may nominate a candidate for election to such office; and, in accordance with § 2-5-101, independent candidates may

also qualify for such office. However, if the judge's term is abbreviated because of death, resignation, removal or other reason after the filing of the declaration of candidacy but prior to the third Thursday in May preceding the regular August election, then the vacancy shall be filled in accordance with subdivision (b)(2), and no such contested election shall be held for such office. Following any such contested election under this subdivision (b)(3)(A)(v), subdivision (b)(4) shall once again apply to such office.

(B)

(i) If an appointed incumbent judge of the court of appeals or court of criminal appeals seeks election to fill the unexpired term of the judge's predecessor, then the judge must qualify by filing a written declaration of candidacy with the state election commission not later than twelve o'clock noon (12:00 p.m.) prevailing time on the first Thursday in February before the next regular August election recurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent judge. After timely filing such declaration, any request by the candidate to withdraw must be filed with the state election commission not later than twelve o'clock noon (12:00 p.m.) prevailing time on the seventh day after the deadline for filing such declaration of candidacy.

(ii) If an appointed incumbent judge of the court of appeals or the court of criminal appeals seeks election to fill the unexpired term of the judge's predecessor, but was appointed to fill the vacancy after the first Thursday in

February preceding the next regular August election recurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent judge, then the judge must qualify by filing a written declaration of candidacy with the state election commission not later than twelve o'clock noon (12:00 p.m.) prevailing time on the first Thursday recurring at least one (1) full week after the appointment. After timely filing such declaration, any request by the candidate to withdraw must be filed with the state election commission not later than twelve o'clock noon (12:00 p.m.) prevailing time on the seventh day after the deadline for filing such declaration of candidacy.

(iii) Unless a contested election is required by subdivision (b)(3)(B)(v), the provisions of title 2, chapter 5, part 1, do not apply to an election in which an appointed incumbent judge of the court of appeals or court of criminal appeals seeks election to fill the remainder of the unexpired term of office of the judge's predecessor.

(iv) If an appointed incumbent judge fails to timely file the written declaration of candidacy for election to fill the unexpired term of the judge's predecessor, or if such judge after the qualifying deadline withdraws as a candidate, then a vacancy is created in the office at the expiration of the incumbent's current term, effective the first day of September next succeeding the election, and shall be filled in accordance with subdivision (b)(2).

(v) If the judicial evaluation commission makes a recommendation "for replacement" of an incumbent judge

of the court of appeals or the court of criminal appeals, but the judge nevertheless files or has filed the declaration of candidacy required by subdivision (b)(3)(B), then subdivision (b)(4) does not apply to the incumbent judge's office; and the election to fill the unexpired term of the judge's predecessor shall instead be filled by the qualified voters of the state in a contested election at the regular August election. Each such contested election shall be conducted in accordance with general election law set forth in title 2. In accordance with § 2-13-203, each political party may nominate a candidate for election to such office; and, in accordance with § 2-5-101, independent candidates may also qualify for such office. However, if the judge's term is abbreviated because of death, resignation, removal or other reason after the filing of the declaration of candidacy but prior to the third Thursday in May preceding the regular August election, then the vacancy shall be filled in accordance with subdivision (b)(2), and no such contested election shall be held for such office. Following any such contested election under this subdivision (b)(3)(B)(v), subdivision (b)(4) shall once again apply to such office.

(4) If an appointed or elected incumbent judge of the court of appeals or the court of criminal appeals timely files the written declaration of candidacy, then only the name of the candidate, without party designation, shall be submitted to the voters of the state in the regular August election. Each county election commission of the state shall cause the following to be placed on the ballot:

Shall (*Name of the candidate*) be replaced or retained in office as
a Judge of the (*Name of Court*)?

_____ Replace

OR

_____ Retain.

(5)

(A) If a majority of those voting on the question vote to replace the candidate, then a vacancy exists in the office on the first day of September next succeeding the election and shall be filled in accordance with subdivision (b)(2).

(B) If a majority of those voting on the question vote to retain the candidate in office, then the candidate is duly elected to the office for a full eight-year term or for the balance of the unexpired term, as the case may be; and the candidate shall be given a certificate of election.

(c)

(1) Each judge of the supreme court shall be elected to a full eight-year term of office by the qualified voters of the state in a contested election held at the regular August election in 2014 and at the regular August election recurring every eight (8) years thereafter.

(2) If a vacancy occurs during the term of office of any judge of the supreme court because of death, resignation, removal or other reason, then the vacancy shall be filled, for the remainder of the unexpired term, by the qualified voters of the state in a contested election held at the next regular August election recurring more than thirty (30) days after the vacancy occurs. In accordance with Article VI, Sections 2 and 3 of the Constitution of Tennessee and § 16-3-101, the vacancy shall be filled from the grand division or district of the state in which the

vacancy occurs. In the meantime, the governor shall appoint a person, who is duly licensed to practice law in this state and who is fully qualified under the constitution and statutes of Tennessee, to discharge the duties of such office until the first day of September next succeeding the election.

(3) Each election for the office of judge of the supreme court shall be conducted in accordance with general election law set forth in title 2. In accordance with § 2-13-203, each political party may nominate a candidate for election to each such office; and in accordance with § 2-5-101, independent candidates may also qualify for each such office.

(d) Whenever a vacancy due to death, resignation or other reason occurs during the term of office of any judge of the supreme court, court of appeals, or court of criminal appeals or any circuit, chancery, criminal or other state trial court of record, prior to making an appointment pursuant to this section, the governor is authorized to receive and consider, but shall not be bound by or restricted to, the recommendations or nominations submitted by any:

(1) Interested legal organization, including but not limited to the Tennessee bar association, the Tennessee association for justice, the Tennessee defense lawyers association, the Tennessee association of criminal defense lawyers, the Tennessee district attorneys general conference, the Tennessee public defenders conference, the Tennessee lawyers association for women, and the Tennessee chapters and affiliates of the national bar association;

(2) Entity of the judicial branch, established by rule of the supreme court or otherwise, for the purpose of evaluating prospective candidates for appointment to the judiciary; or

(3) Other concerned organization or entity.

(e) As used in this section, "regular August election" means the election held on the first Thursday in August of every even-numbered year.

SECTION 2. Tennessee Code Annotated, Title 17, Chapter 4, is amended by deleting Part 1 in its entirety.

SECTION 3. Tennessee Code Annotated, Section 17-4-201, is amended by deleting the section in its entirety and by substituting instead the following:

§ 17-4-201.

(a)

(1) By rule, the supreme court shall establish a judicial evaluation program for judges of the court of appeals and the court of criminal appeals. The purpose of the program shall be to assist the public in evaluating the performance of incumbent judges of such courts. The judicial evaluation commission shall perform the required evaluations. The commission shall make a recommendation either "for replacement" or "for retention" of each incumbent judge of the court of appeals or the court of criminal appeals; provided that the commission shall not evaluate or make any recommendation with regard to any judge whose term of office is abbreviated because of death, resignation or removal. Furthermore, the commission shall not include within the final report, publicly disclosed pursuant to subsection (c), a recommendation for replacement or for retention of any judge whose term of office is abbreviated because of death, resignation or removal or who fails to timely file a written declaration of candidacy as required by § 17-1-301(b)(3), or who timely withdraws as a candidate for election.

(2) If an incumbent judge of the court of appeals or the court of criminal appeals holds office for one (1) year or more preceding the deadline for filing the required declaration of candidacy for either an unexpired term or a full eight-year term, then evaluation procedures shall

be based on the results of any evaluations performed throughout the judge's service on the appellate bench, evaluation surveys, personal information contained in an approved self-reporting form and such other comments and documents as the commission receives from any other reliable source. However, if an incumbent judge of the court of appeals or the court of criminal appeals holds office for less than one (1) year preceding such deadline, then evaluation procedures shall be based on personal information contained in the self-reporting form and such other comments and documents as the commission receives from any other reliable source.

(3) Information collected pursuant to subdivision (a)(2) shall be confidential and shall be publicly disclosed only in the manner permitted by subsection (c). Upon request, each member of the judicial evaluation commission shall enjoy complete access to any individual survey, form, application, comment and document submitted, conveyed or compiled for the purpose of judicial evaluation; however, each such member must protect the confidentiality of such information as well as the anonymity of survey respondents.

(4)

(A) At least thirty (30) days prior to the deadline for filing a declaration of candidacy, required by § 17-1-301(b)(3), the judicial evaluation commission shall provide an incumbent judge of the court of appeals or the court of criminal appeals with a draft of the commission's evaluation and shall provide the judge with a reasonable opportunity to comment or respond either personally or in writing.

(B) As soon as is reasonably practicable under the circumstances, but not less than three (3) days prior to the

deadline for filing a declaration of candidacy required by § 17-1-301(b)(3), the judicial evaluation commission shall provide an incumbent judge of the court of appeals or the court of criminal appeals with a draft of the commission's evaluation and shall provide the judge with a reasonable opportunity to comment or respond either personally or in writing.

(b)

(1) The judicial evaluation commission shall be composed of twelve (12) members.

(2) The judicial council shall appoint six (6) of the members, of whom four (4) shall be state court judges and two (2) shall be nonattorneys.

(3) The speaker of the senate shall appoint three (3) members, of whom one (1) shall be a nonattorney.

(4) The speaker of the house of representatives shall appoint three (3) members, of whom one (1) shall be a nonattorney.

(5) Prior to making an appointment pursuant to this subsection (b), each speaker may receive, but shall not be bound by or restricted to, recommendations or nominations submitted by interested bar organizations, including but not limited to the Tennessee bar association, the Tennessee association for justice, the Tennessee defense lawyers association, the Tennessee association of criminal defense lawyers, the Tennessee district attorneys general conference, the Tennessee public defenders conference, the Tennessee lawyers association for women, and the Tennessee chapters and affiliates of the national bar association.

(6) Each appointing authority, in making appointments, shall do so with a conscious intention of selecting a body which reflects a diverse mixture with respect to race and gender.

(7) The supreme court's evaluation procedure may permit the judicial evaluation commission to perform an evaluation with less than the full membership in panels, but the full commission shall approve the evaluation.

(8) To stagger the terms of judicial evaluation commission members, beginning September 1, 1999, the four (4) nonattorney members on the commission shall serve six-year transition terms; the four (4) state court judges on the commission shall serve four-year transition terms; and the four (4) attorney members on the commission shall serve two (2) year transition terms. At the conclusion of the transition terms, each regular term of a commission member shall be six (6) years. A vacancy on the commission shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(9) No commission member shall serve more than two (2) terms.

(10) A member of the judicial evaluation commission is not eligible to seek a judgeship that becomes available as a result of, or related to, the commission's recommendation for replacement of an incumbent appellate judge as set out in subsection (a).

(c)

(1) The judicial evaluation program shall require publication and disclosure of a final report. The final report shall not include any individual record or evaluation but may include, for each appellate judge, the individual final scores for the survey results. The final report shall be made available for public inspection on the first Thursday in May preceding the regular August election. On the first Sunday in July preceding the regular August election, the final report shall be published in a daily newspaper of general circulation in the Tri-Cities area, Knoxville, Chattanooga, Nashville, Jackson and Memphis. The final report for each appellate court judge may not exceed six hundred (600) words.

(2) As soon as is reasonably practicable under the circumstances, in order to assist the citizenry in electing the best qualified persons to the court of appeals and the court of criminal appeals, the commission shall cause supplemental final reports to be published as may be necessitated by the filing of declarations of candidacy, pursuant to § 17-1-301(b)(3)(A)(ii) or § 17-1-301(b)(3)(B)(ii).

(d) The judicial evaluation program, including the public report and the ballot information, shall apply to each judge of the court of appeals or the court of criminal appeals who seeks to serve a complete term after September 1, 1994.

SECTION 4. Tennessee Code Annotated, Section 4-29-229(a), is amended by deleting subdivisions (46) and (47).

SECTION 5. Tennessee Code Annotated, Section 4-29-236(a), is amended by inserting the following language as a new, appropriately designated subdivision:

() Judicial evaluation commission, created by § 17-4-201;

SECTION 6.

(a) If any vacancy in the office of judge of the supreme court, court of appeals, or court of criminal appeals, or any circuit, chancery, criminal or other state trial court of record remains unfilled on, or occurs after, July 1, 2009, then the vacancy shall be filled in accordance with Section 1 of this act.

(b) If any vacancy in the office of judge of the supreme court, court of appeals, or court of criminal appeals, or any circuit, chancery, criminal or other state trial court of record is filled by appointment prior to July 1, 2009, but the next regular August election recurring more than thirty (30) days after such vacancy is the election to be held on August 5, 2010, then the election to fill the office for the balance of the unexpired term shall be conducted in accordance with Section 1 of this act.

SECTION 7.

(a) In order to ascertain the will of the people with respect to whether or not a limited constitutional convention should be called, there shall be submitted to the people

of the state at the regular general election to be held on Thursday, August 5, 2010, under the general election laws of the state in the several counties, the following question, which shall be printed in full on each ballot or voting machine, in words and figures as follows:

CONSTITUTIONAL REFERENDUM

Question: Shall a convention be held to alter or reform the following parts and subject matter of the present Constitution of the State of Tennessee, the convention to be limited to consideration of, and action upon, the parts and subject matter specified herein and whose actions with respect thereto shall become effective only after each amendment proposed by the convention is separately submitted to, and ratified by, a vote of the people?

Article VI, Section 3, and Article VI, Section 4, to determine the method for choosing appellate court judges;

_____ **FOR THE CONVENTION**

_____ **AGAINST THE CONVENTION**

Voters will indicate their choice by placing a cross mark (x) opposite one or the other of the above expressions.

(b) The proper officers in all counties shall immediately after the election make a return to the secretary of state of the number of votes cast in their respective counties "For the Convention" and the number of votes cast "Against the Convention"; and, after comparison of the returns by the secretary of state and the attorney general and reporter, the governor shall, by proclamation, announce the results.

(c) If the people approve the question and thereby authorize the limited convention, then delegates shall be elected at the regular general election to be held on Tuesday, November 2, 2010, under the general election laws of the state in the several counties. There shall be twenty-seven (27) delegates, with three (3) such delegates to be elected by the qualified voters of each of the nine (9) congressional districts within the state.

(d)

(1) Any person who is at least twenty-one (21) years of age, a citizen of the United States, and a citizen of Tennessee for three (3) years and a resident of the district for at least one (1) year may become a candidate for delegate to the convention upon filing with the county election commission of his or her county of residence a nominating petition containing not less than twenty-five (25) signatures of legally qualified voters of the district. In the case of a candidate from a congressional district comprising more than one (1) county, only one (1) qualifying petition need be filed by the candidate, and that in the candidate's home county, with a certified copy thereof to be filed with the election commission of each of the other counties in the congressional district.

(2) Notwithstanding any provision of law to the contrary, every person desiring to become a delegate to the convention shall qualify by filing a qualifying petition or petitions by 12:00 o'clock noon, prevailing time, on Thursday, August 19, 2010. The names of candidates for the delegates to the convention shall be placed on the official ballot alphabetically without reference to political affiliation. Each voter shall cast a ballot for one (1) delegate. The three (3) candidates from each congressional district who receive the greatest number of votes shall be the delegates from the congressional district.

(3) The returns from the various counties shall be certified to the secretary of state and canvassed by the secretary of state, the governor, and the attorney general and reporter in the same manner and form as the returns are required to be certified from the election in which the people vote for and against the call of the convention, as provided in Section 7(b). The governor shall, by proclamation, announce the names of those elected as delegates to the convention. Delegates to the convention, elected and certified, shall receive a certificate of election signed by the governor and attested by the secretary of state under the great seal of the state.

(e)

(1) The delegates elected to the convention shall assemble in the chamber of the senate in Nashville at 12:00 o'clock noon on Monday, November 15, 2010, and organize by electing one (1) of their members as president, another as secretary, and by electing such other officers as they consider necessary. If a majority of the delegates are not present on that date, then those present shall adjourn from day to day until a majority appears, when the convention shall be organized. The convention, when organized, may adopt its own rules of procedure and employ such clerks, stenographers, reporters, sergeants-at-arms, and other assistants as the convention considers necessary, and fix the amount of their compensation.

(2) The compensation of the delegates to the convention shall be a per diem allowance and mileage allowance in such amounts as may prevail, during the time the convention meets, for members of the general assembly, which shall be paid by the state in the same manner that members of the general assembly are paid, upon certification by the president and secretary of the convention. In case there shall be a vacancy in the membership of the convention, it shall be filled by election of the legislative body of the county of residence of the delegate whose seat becomes vacant.

(f) It is the duty of the secretary of state to make publication in at least one (1) general circulation newspaper published in each county of the fact that a constitutional convention election is to be held in the state on Thursday, August 5, 2010. Any county not having a general circulation newspaper shall be considered to have been notified by publication in the newspaper published in counties immediately adjacent thereto. The secretary of state shall also certify to the various election commissioners of the different counties the form for the ballot with reference to the constitutional convention election agreeable to the terms of this section and furnish the election commissioners with any other printed information pertaining to the election that is material or necessary. If the

people vote in favor of the convention, then it is the duty of the secretary of state to issue a call for the election of delegates to the convention. The election shall be held in the various counties on Tuesday, November 2, 2010, and the secretary of state shall certify to the various county election commissioners the form of the ballot to be used in the election of delegates as provided in Section 7(d)(2). All ballots used in the 2010 regular August election shall include the above question as to holding the limited constitutional convention, and the ballots used in the 2010 regular November election shall include the names of the candidates for delegates to such convention, if such convention is approved.

(g) The final action of the convention with respect to the alteration or reformation of Article VI, Section 3; and Article VI, Section 4; relative to determining the method for choosing appellate court judges, shall be duly certified by the president and the secretary of the convention and the original certified copy shall be transmitted to the secretary of state.

(h) Any amendment adopted by the convention, falling within the limits prescribed by this act for such convention, shall be submitted to the voters of the state for ratification or rejection of each separate amendment at an election to be held in such manner and on such date after the final adjournment of the convention as may be fixed and determined by the convention. The official ballot to be used in any such election shall be arranged so that the voter can vote separately for the ratification or rejection of each and every amendment. Any election so held shall be held under the general election laws of the state. When the election to ratify or reject any amendment to the constitution has been held, the various county election commissioners shall certify the results thereof in each county to the secretary of state, who, together with the governor and attorney general, shall canvass the returns, and the governor shall issue a proclamation showing the results of the election on the ratification or rejection of the amendments. All amendments ratified and approved in the election held for that

purpose shall be proclaimed by the governor as a part of the constitution of the state and such proclamation shall be filed in the office of the secretary of state.

(i) All expenses in connection with the holding of any of the elections authorized by this section shall be paid by the commissioner of finance and administration on warrant drawn upon the treasurer upon certification by the secretary of state to the correctness of each account. No compensation shall be paid by the state to the various county election commissioners for their services or for rental space or quarters in the various counties for places for holding any elections herein authorized.

(j) Notwithstanding any provision of law to the contrary:

(1) Every person acting as a lobbyist or employer of a lobbyist at the constitutional convention shall be subject to the provisions of Title 3, Chapter 6, as if the convention constitutes an annual session of the general assembly;

(2) Every person who serves as a delegate to or an employee of the constitutional convention shall be subject to the provisions of Title 2, Chapter 10, Part 1, as if the convention constitutes an annual session of the general assembly and such person is a member or an employee of the general assembly; and

(3) Every person serving as a delegate to, or an employee of, the constitutional convention (as well as such person's immediate family), shall be subject to the provisions of § 3-6-304 and § 3-6-305, as if the convention constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly.

SECTION 8. All cost savings to state government, directly attributable to this act, shall be allocated to defray publication expenses required by Section 7; and the remainder of such savings shall be allocated to the administrative office of the courts for the sole purpose of enhancing the effectiveness of the judicial evaluation commission.

SECTION 9. Sections 2, 4 and 5 of this act shall take effect on becoming law, the public welfare requiring it. The remaining provisions of this act shall take effect July 1, 2009, the public welfare requiring it.